BOOK REVIEWS

The Negotiable Instruments Law. Third Edition. By Joseph Doddridge Brannan. Cincinnati, The W. H. Anderson Co. 1920. pp. lxviii, 622.

The primary questions for any reviewer of a book are: *What is it?* and *What of it?* The second question is easy to answer in the instant case: no man who has to work with the law of negotiable instruments can afford to do without Professor Brannan's new edition. The other question presents greater difficulties.

Primarily, the book is a compendium of the decisions since the passage of the N. I. L. It differs from compendia in general in that it is accurate, practically complete, and above all, usable. The cases are grouped in uniform arrangement under the sections of the Law which, like the digests, are well set off typographically. Dicta and decisions, cases which cite and cases which do not consider the N. I. L., and, where important, the course of reasoning followed by a court, are clearly indicated. Cross-references are generous; the requisite tables of cases and corresponding sections, and an unusually adequate index, are provided. And the arrangement of the digests, while its reason has not always been apparent to the reviewer, is in the main such as to develop the digests themselves into something of a coherent comment on the sections under which they are grouped. Put in the hands of a law-school class, this material provides a teaching adjunct to the case-book of whose value the first trial will prove convincing.

So much of the book is easy to describe and estimate. But so far as the new edition is a commentary on the law of bills and notes, it is not so easy to discuss. The Ames-Brewster-McKeehan articles are, as before, (and very properly) reprinted in full and are also summarized under the appropriate sections. Scattered—with considerable frequency—through the book, are hints, comments, and discussions of the author, references to periodical material, and criticisms, at times exhaustive, of one or another set of decisions. All these are valuable. The author's grasp is firm, his insight keen, and his discussion lucid. The possibility of constituting a payee a holder in due course (pp. 50 ff., 162 ff.), for instance; the negotiability of instruments payable in "currency" (pp. 27); the procedural effect of possession of an unendorsed order note (pp. 154 ff.); the effect of selling accommodation paper after its maturity (pp. 122 ff.), and of defects in title under sec. 59 (pp. 217-222); the rights (p. 332) and the duties (pp. 240 ff.) of an anomalous endorser; the strange effect of sec. 119 on a surety-maker (pp. 313 ff.); the confusion of acceptance and promise to accept (pp. 362 ff.); these and a goodly number of other important questions are ably and helpfully treated. And the collections of cases—to instance a few—on the effect of a check as an assignment (pp. 403), on the extension of a bank credit as constituting value (pp. 100 ff., 171 ff.), on what constitutes "payment" (pp. 318 ff., 365, and especially 280 ff.), and on the relation of draft and bill of lading (especially pp. 227 ff.), are particularly valuable.

But the omissions are at times puzzling. Perhaps one should be sufficiently grateful to find periodical literature indicated at all, not to complain because the references are almost without exception to the single REVIEW with which Professor Brannan has of course been most closely in touch. And the book does not purport, as does that of MacLaren, to provide the common-law background of the act it annotates. But in dealing with holes in the codification, if common-law cases are inserted on payments made after maturity but without notice in pursuance of a purchase concluded before maturity (p. 179), surely

the omission of all discussion of the status of a post-dated check before its due-day is to be regretted; or, for that matter, of the effect, pending maturity, of making a note payable at a bank under sec. 87. A man of the author's proved ability and learning could do much to make clear the parol evidence rule in its effect on the contract of an endorser (*cf.* pp. 233 ff.) and, above all, its effect on conditional delivery (*cf.* pp. 59 ff.). Nor are the difficulties slight which are involved in notice of fiduciary relationship from the face of the instrument (*cf.* pp. 194 ff.); in the question of payment "in due course" under secs. 51, 88, 119; in the matter of the antecedent debt of a third person as constituting value or consideration. One looks with interest and expectation for Professor Brannan's views on such questions as these. It is a decided disappointment not to find them. And one may well hope that it will not be long before the profession is favored with a more thoroughly comprehensive treatment from his pen of the multitudinous difficulties of negotiable paper. Perhaps one may add a regret that the present book appeared too early to take notice of *Kelso & Co. v. Ellis* (1918, N. Y.) 121 N. E. 364, (1919) 28 YALE LAW JOURNAL, 692, which has gone far to bring New York in line, on the matter of a pledge for an antecedent debt as constituting value.

To sum up: as a compendium of decisions under the N. I. L., Professor Brannan's new edition is excellent—the best, on any subject, the reviewer has seen—and well nigh indispensable; but it contains too much of too good a text on bills and notes to be treated as a mere compendium, while not enough to satisfy the desires and expectations which it itself arouses.

K. N. L.

The Renovation of International Law. By D. Josephus Jitta. The Hague, Martinus Nyhoff. 1919. pp. xvi, 196.

This is a most remarkable book. Its author is well known in the juridical world by his earlier works—*La méthode de droit international privé* (1890); *La substance des obligations en droit international privé* (1906); and *International Privaatrecht* (1916)—all of which will remain landmarks in the science of private international law. In all of these, he has shown himself to be one of the most original thinkers of our times. Before him, the problem of the conflict of laws was deemed to be: which of several systems of law with which a legal relationship is connected, is to determine its solution. The differences of opinion related chiefly to the selection of the rule itself and to the ultimate basis upon which these rules rested. Some looked at the subject from a national point of view; others from an international viewpoint. Most of the internationalists, following Savigny, found in international law only the limits within which the legislation and jurisprudence of the individual states might move. Zitelmann contended, on the other hand, that the rules of the conflict of laws were to be derived directly from international law.

According to Professor Jitta, private international law is not the science relating to the conflict of laws or law-givers "but the science of the juridical relations between men in a community larger than a state" (p.119). The rules of the conflict of laws are not imposed by the law of a particular state, nor of the collectivity of states, i. e., international law, but by humanity itself, the states being only the organs by means of which those rules are enforced. "Every state, even when it is acting in isolation, is bound to recognize . . . every juridical relation established in conformity with the requirements of the reasonable order of international social life" (p. 91). The rule to be applied to a given juridical relationship is the one which will permit it to fulfill its social aim in humanity such as the state conceives it to be. Our author rejects, therefore, the traditional rules—the *lex loci contractus,* the *lex loci solutionis,*